

REMARKS / ARGUMENTS

The present application includes pending claims 1-46, all of which have been rejected. Claims 1, 8, 15, 31-32, and 39-40 have been amended. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-30 have been objected because of informalities. Claims 1-7, 15-27, and 31-46 are rejected under 35 U.S.C. § 102(e) as being anticipated by Tanaka (US Patent 7,245,678). Claims 8-14 and 28-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanaka in view of Koerner (US Patent 7,049,933). The Applicant respectfully traverses these rejections at least based on the following remarks.

I. Claim Objections

Claims 1-30 have been objected because of informalities. The Applicant has amended claims 1, 8, 15, 32, and 40, as set forth above, to replace "ignoring" with "discarding" to overcome the claim objections. The Applicant points out that the term "discarding a signal path", as used in the specification and in the claims, means deselecting, ignoring or simply not using the signal path.

The Applicant submits the objections are now moot and should be withdrawn.

REJECTION UNDER 35 U.S.C. § 102

II. Tanaka Does Not Anticipate Claims 1-7, 15-27, and 31-46

The Applicant first turns to the rejection of claims 1-7, 15-27, and 31-46 under 35 U.S.C. § 102(e) as being anticipated by Tanaka. With regard to the anticipation rejections under 102(e), MPEP 2131 states that “[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” See id. (internal citation omitted).

Without conceding that Tanaka qualifies as a prior art under 35 U.S.C. § 102(e), the Applicant traverses the rejection as follows.

A. Rejection of Independent Claims 1, 8, 15, 31, and 39

With regard to the rejection of independent claim 1 under Tanaka, the Applicant submits that Tanaka does not disclose or suggest at least the limitation of “determining a signal quality metric for a plurality of signal paths, wherein one or more of said plurality of signal paths is selected based on stored information related to preceding frames, the stored information received via each of the plurality of signal paths,” as recited by the Applicant in independent claim 1.

The Final Office Action states the following:

Tanaka teaches in figure 4, the antenna switching is done based on signal strength determination (i.e. signal quality metric (RSSI) which is based on bit error rate (BER)) (see column 5, lines 30 – 35) (see column 6, lines 9 - 25). **Tanaka further teaches determining the bit error rate requires detection of plurality of frames" (see column 7, lines 57 - 60).** Which clearly teaches that in order to determine BER, bit error rate measuring unit must know the information related to preceding frames. Therefore Tanaka clearly teaches the cited limitation of "determining a signal quality metric for a plurality of signal paths, wherein one or more of said plurality of signal paths is selected based on stored information related to preceding frames,".

See the Final Office Action at page 2 (emphasis added). Tanaka discloses a receiver unit 6, which uses receiving antennas 2a, 2b to receive a digital modulated signal from a digital wireless microphone. Furthermore, the receiver unit 6 of Tanaka uses a changeover switch 4 to select one of the antennas 2a, 2b in response to a selection signal. See Tanaka at Abstract and Figure 1.

In the above bolded citation, the Final Office Action relies on FIG. 4 and col. 7, lines 57-60 of Tanaka. Referring to FIG. 4 of Tanaka, the Applicant points out that the antenna switching between antennas 2a and 2b is done based on the RSSI determination. More specifically, once an antenna is selected, the RSSI is calculated and it is determined in which region (H, M or L in FIG. 3) the RSSI is located. Further signal processing and subsequent antenna switching is based on the RSSI signal determination for a specific antenna. Even if the RSSI requires determination of the bit error rate (BER) by detecting a plurality of frames, such

frames are detected only for the currently selected antenna and only for a given signal path associated with the currently selected antenna. In this regard, Tanaka does not disclose that the RSSI is determined based on stored information that is received via each of the plurality of signal paths for the 2 antennas. In fact, Tanaka does not even disclose that any information received via each of the plurality of signal paths is being stored.

Therefore, the Applicant maintains that Tanaka does not disclose or suggest at least the limitation of “determining a signal quality metric for a plurality of signal paths, wherein one or more of said plurality of signal paths is selected based on stored information related to preceding frames, the stored information received via each of the plurality of signal paths,” as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Tanaka and is allowable. Independent claims 8, 15, 31 and 39 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 8, 15, 31 and 39 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-7, 16-24, 32-38, and 40-46

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 8, 15, 31 and 39 under 35 U.S.C. § 102(e) as being anticipated by Tanaka has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-7, 16-24, 32-38, and 40-46 depend from independent claims 1, 15, 31 and 39 and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-7, 16-24, 32-38, and 40-46.

III. Rejection of Claims 8-14 and 28-30

Claims 8-14 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka in view of Koerner (US Patent 7,049,933). Independent claim 8 is similar in many respects to the method disclosed in independent claim 1. Furthermore, Koerner does not overcome the deficiencies of Tanaka as it relates to the above argument for the allowability of claim 1. Therefore, the Applicant submits that independent claim 8 is also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1. Additionally, since the additional cited reference (Koerner) does not overcome the

deficiencies of Tanaka, claims 9-14 and 28-30 depend from independent claims 8 and 15, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 8-14 and 28-30.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-46 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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